

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:20-cv-00269-MR
(CRIMINAL CASE NO. 1:12-cv-00055-MR-WCM-1)**

CEDRIC LLAWENLLYN SURRATT,)	
)	
Petitioner,)	
)	
vs.)	
)	
UNITED STATES OF AMERICA,)	<u>ORDER</u>
)	
Respondent.)	
_____)	

THIS MATTER is before the Court on Petitioner's a Letter that was docketed as a Motion to Proceed *In Forma Pauperis* [Doc. 2], and Motion to Place Case in Abeyance [Doc. 3].

Petitioner filed a *pro se* Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody pursuant to 28 U.S.C. § 2255 in the instant case on September 14, 2020.¹ He argues that he is actually innocent of violating 18 U.S.C. § 922(g) pursuant to Rehaif v. United States, 139 S.Ct. 2191 (2019), and that appellate counsel provided ineffective assistance on direct appeal.

¹ Houston v. Lack, 487 U.S. 266, 276 (1988) (establishing the prison mailbox rule); Rule 3(d), Rules Governing § 2255 Proceedings in the United States District Courts (addressing inmate filings).

First, Petitioner asks the Court to allow him to proceed in this action without paying the filing fee. Petitioner's Motion to Proceed *In Forma Pauperis* will be denied as moot, as § 2255 proceedings are a continuation of the criminal action and do not require a filing fee. United States v. Frady, 456 U.S. 152, 182 n.6 (1982) (Brennan, J., dissenting); see Advisory Committee Notes to the Rules Governing § 2255 Proceedings in the United States District Courts, Rules 1, 3.

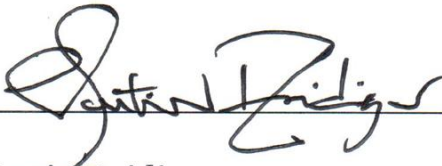
Second, Petitioner asks the Court to stay this action pending the Fourth Circuit's consideration of his successiveness application pursuant to § 2255(h) and 2244, Fourth Cir. Case No. 20-445. The Court finds that staying this action while the Fourth Circuit considers Petitioner's successiveness application is in the interest of justice and judicial economy and will be granted. Petitioner is instructed to file a Notice in this Court promptly upon the Fourth Circuit's resolution of Case No. 20-445.

IT IS, THEREFORE, ORDERED that Petitioner's Letter [Doc. 2] is construed as a Motion to Proceed *In Forma Pauperis* and is **DENIED** as moot.

IT IS FURTHER ORDERED that Petitioner's Motion to Place Case in Abeyance [Doc. 3] is **GRANTED**. Petitioner shall promptly file a Notice with the Court upon the Fourth Circuit's ruling in Case No. 20-445.

IT IS SO ORDERED.

Signed: November 3, 2020



Martin Reidinger
Chief United States District Judge

